IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2006

CORAM:

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

CMA.No.1153/1997

N. Velu Appellant/Claimant

vs.

Anna Transport Corporation by its
Managing Director, 12, Ramakrishna Road
Salem-7 Respondent/Respondent

Prayer:- This Civil Miscellaneous Appeal is filed against the order and Decree dated 30.6.1997 made in MACT.OP.No.455/1995, on the file of the Motor Accidents Claims Tribunal (I Additional District Court) Salem.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.P. Jagadeeswaran

JUDGEMENT

The claimant in the claim petition is the appellant. The challenge in this appeal is to the award of the Motor Accidents Claim Tribunal (I Additional District Court) Salem, dated 30.6.1997, made in MCOP.No.455/1995.

2. According to the appellant, on 5.12.1992, he met with an accident, when he was getting down from the bus belonging the Respondent/Corporation at about 10.25 a.m. in the Salem Old Bus Stand. The appellant would contend that while the bus came to a halt in the bus stand and while he was getting down after two other passengers got down from the bus, the driver of the bus suddenly moved the bus with a jerk and because of that, he fell down, when the front wheel of the bus ran over his left leg. Due to the accident, his left leg had to be amputated below the knee. The appellant made a total claim for Rupees Three Lakhs.

3. The Tribunal, relying upon the statement said to have been contained in the First Information Report, Ex.P1, took the view that even according to the appellant, he got down from the bus, when it was in motion and therefore, no negligence can be

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attributed to the driver of the bus in order to fasten higher liability. Ultimately, the Tribunal granted no fault liability of Rs.12,000/- to the appellant. Assailing the said award, the learned counsel for the appellant brought to my notice the decision of the Apex Court reported in 2004-2-LW-15 (The Municipal Corporation of Greater, Bombay Vs. Shri Laxman Iyer and another), wherein the apex court, while explaining "Doctrine of last opportunity" has held as under:-

> "8. Though the driver may not have been in this case wholly responsible for the accident, as contended, from the mere fact that the victim acted in contravention of a traffic regulation alone, complete immunity from liability of the driver or the appellant Corporation for the accident so as to disown totally the responsibility to compensate the injured or dependants of the victim cannot be accorded also. Merely because there may have been a breach of any traffic regulation, in the absence of concrete, clinching, positive and legally acceptable material to fix the sole responsibility for the accident only on such injured/victim, which is conspicuously absent on the facts and circumstances, of this case, the liability of the appellant Corporation, though to what extent, remains to be considered further. Even according to the stand of the Corporation, the victim was seen by the driver from a distance of about 30 ft. and the vehicle was moving at a snail's pace. If that be so, it is not understood as to how it became totally impossible for the driver to avoid the accident has not been substantiated by proper evidence. In fact the High Court has noticed that there was ample scope for avoiding the collision between the cycle and the bus. The evidence on record also establishes that the bicycle was thrown to a distance of 4-5 ft. Before taking the turn, the horn was found not blown by the driver. The application of the brakes and the incident of collision between the cycle and the bus seem to have been almost simultaneous. The stand of the Corporation that the bus had come to a halt much prior to the incident of the collision is not acceptable and though has been rightly rejected by the Tribunal and the High Court, the infirmity in their orders also lay in rejecting the plea of contributory negligence completely. The Tribunal as well as the High Court ought to have appropriately apportioned the negligence keeping in view the materials placed on record and properly balancing rights of the parties."

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Applying the above said principle set out by the Apex Court to the facts of this case and on perusal of the evidence of PW.3 as well as that of RW.1, it cannot be held that the appellant was solely responsible for having sustained the injury, in which he lost his left leg. PW.1, in his evidence, has categorically stated that he got down from the bus after the bus came to a halt. It is not in dispute that before the appellant got down from the bus, two other passengers got down from the bus. PW.3 also stated that after he got down from the bus and while the appellant was getting down, the driver suddenly moved the bus and in that process the appellant fell down from the bus and the front wheel ran over his leg. Even according to RW.1, while he was cautioning the passengers not to get down from the bus, since the bus was running at very slow speed inside the bus stand and therefore, it will have to be held that he had the last opportunity to avoid the accident. Even assuming that the appellant got down from the bus, while the bus was in motion, it was not as if the bus was running on the main road. Admittedly, the vehicle had entered the bus stand and was about to come to a halt. In such circumstances, if RW.1 had taken due care, the unfortunate incident could have been avoided. It was unfortunate that the appellant met with an accident and had to loose his leg. In such circumstances, even if it has to be held that the appellant was also responsible for the accident, it cannot be held that it could be to an extent of anything more than 25%. Therefore, I am of the view that the negligence attributable to the appellant can at best be limited to an extent of 25%. On that basis, the compensation is to be worked out. According to the appellant, he was working as a Mason and was aged about 30 years. The accident took place in the year 1992 and at the relevant point of time, the standard wages for such non-prescribed categories was taken as Rs.1064/- per month. Since the appellant had suffered an amputation below the knee, the disablement has been statutorily prescribed at 75%. On that basis, when the compensation for injury is worked out, it will come to a sum of Rs.70,000/- and the loss of earning for the disablement will work out to (Rs.1064x12x17x70)/100 = Rs.1,51,939.20 and for pain and suffering and medical expenses, a sum of Rs.10,000/- will have to be granted. For transport expenses and extra nourishment, another sum of Rs.5,000/- is to be granted. In all, a sum of Rs.2,36,939/- is to be awarded by way of compensation. Since the negligence on the part of the appellant has been held to be 25%, a sum of Rs.1,77,704/- would be payable by the Respondent herein by way of compensation. As per the impugned award, the Respondent is said to have already paid a sum of Rs.12,000/- to the appellant. Therefore, the remaining compensation payable is rounded off to Rs.1,60,000/-. Accordingly, the award amount stands modified and the balance compensation payable by the Respondent is determined at Rs.1,60,000/-, which shall be paid by the

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Respondent with interest @ 7.5.% p.a. from the date of the claim petition within a period of eight weeks from the date of receipt of a copy of this order. This Civil Miscellaneous Appeal is ordered accordingly. No costs.

Srcm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Motor Accidents Claims Tribunal
(First Additional District Court) Salem.

2.The Record Keeper, VR Section, High Court, Madras

+ 1 cc to Mr.P. Jagadeeswaran, Advocate SR No.3290

TEJ(CO)
SR/13.2.2006 CMA.No.1153/1997

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